No. 12719

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED TRUCK LINES, INC., a Corporation,
Appellant.

vs.

INTERSTATE COMMERCE COMMISSION,
Appellee

Appellant's Reply Brief

Upon Appeal from the District Court of the United States for the Eastern District of Washington Northern Division

---

REILLY & CAEL
EDWARD J. REILLY
603-604 Columbia Building
Spokane 8, Washington
Attorneys for Appellant

ACME STAMP & PRINTING CO.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED TRUCK LINES, INC., a Corporation,
Appellant.

vs.

INTERSTATE COMMERCE COMMISSION,
Appellee

Appellant's Reply Brief

Upon Appeal from the District Court of the United States for the Eastern District of Washington Northern Division

---

REILLY & CAEL
EDWARD J. REILLY
603-604 Columbia Building
Spokane 8, Washington
Attorneys for Appellant

TABLE OF CASES

It may be helpful to this Court for appellant to reply to the Interstate Commerce Commission's brief seriatim.

On pages 1, 2, & 3 of Appellee's Statement of Facts relative to the case, the Appellant makes no reply.

On page 4 on Appellee's proport, The Questions at Issue, several statements are made that have no support in the record, particularly in the second paragraph, where the brief of the Appellee sets out "The sole question before the Court, therefore, is whether appellant is authorized to operate over U. S. Highway No. 30, between Boise and Pasco, (in lieu of operating over its authorized regular routes between Boise and Portland via Spokane) on the theory that Pasco is an off-route point in connection with Appellant's authorized regular route operations between Boise and Spokane."

The Interstate Commerce Commission introduced no evidence, whatsoever, at the hearing relative to any operations from Boise to Portland and it only appears from appellee's statement in its brief, on that point, Appellee is at this stage of the proceedings, attempting to interject something into its brief and bring the same before the Court, which was never raised by the Appellee before. The Appellee's contention that, that is the sole question before the Court, cannot be accepted by the Appellant. The Appellant contends that the sole question before the Court is; Has the Appellant, by virtue of its certificate MC 7746 Sub 22, the legal right to traverse U. S. Highway No. 30, from a point near Fruitland, Idaho, to a point near Pendleton, Oregon, at the junction with U. S. Highway 30 and U. S. Highway 395, in rendering service from its regular route operation Boise to Spokane, to

points and places in Grant, Lincoln, Franklin, Adams and Benton Counties, as set out in the above mentioned certificate. That, and that alone, Appellants contend is the issue before the court.

On page 5, under the title "Argument" of Appellee's brief, they set out that it is the contention of the Appellant, that Pasco is an off-route point in connection with Appellants authorized regular route operations between Portland and Spokane. The contention of the Appellant is that Pasco, as defined in Certificate No. MC 7746, is an intermediate point in Appellants regular route operation between Portland and Spokane, however, the Appellant contends that Pasco, Washington, being an intermediate point in Appellants operations Portland to Spokane, that it is also considered an off-route point by the Appellant as to Appellants regular route operations Spokane to Boise.

The fact that Pasco, Washington, being a point and place within the five counties, and also named as an intermediate point on Appellants operations Spokane to Portland, does not exclude it from being considered an off-route point in connection with Appellants authorized regular route operation Spokane to Boise.

This fact is well established and acknowledged by the Interstate Commerce Commission and more clearly established as in the case of Buckingham Transportation Company of Colorado and Fast Freight Inc. No. MC F1423, wherein Buckingham Transportation Company served Casper, Wyoming, as an intermediate point under the one certificate, and served it as an off-route, point in connection with its regular

route between Denver and Newcastle, Wyoming, via Cheyenne and Lush Wyoming.

On page 6, the Appellee again makes mention of through transportation service between Boise and Portland. The Appellee, by the use of this language seems to confuse and cloud the issue of transportation between Boise and Portland. It is not before the Court. On page 6, the Appellees set out that the rules of the Commission governing rules to territories as presented on pages 14 and 15 of Appellant's opening brief, are in no sense, rules of the Commission, nor having the force and effect of law.

In replying to that statement in Appellee's brief, the Appellant argues that, to its knowledge, they are the only rules by the Commission, wherein a carrier can receive from an employee of the Commission, any information whatsoever. As to the Commission's rulings on service to off-route points.

It can be well noted, that the rules of the Commission governing rules to territories, as set out by the Appellant on pages 14 and 15 of its opening brief, are in conflict with the theory that Appellee attempts to establish, by citing three decisions of the Interstate Commerce Commission, dealing with off-rout points, also that the same opinions are of a much later date than the decisions of the Interstate Commerce Commission, in the three cases cited.

On page 7, the Appellee refers to four Court decisions, wherein Government agencies were parties to the litigation, and in particular three cases where the Interstate Commerce Commission were parties, however, the Appellant argues that there is no relevancy whatsoever, in the decision of the

Courts in the cases cited by the Appellee, and the question before this Court.

The Appellee refers to the Commission's decisions dealing with the authority of motor carriers to serve off-route points.

In Dixie Freight Lines, Inc. Extension Application, 29 M. C. C. 406, the Commission stated:

> An off-route point is one usually served by line-haul equipment making a short side trip and returning as soon as possible to the regular route or schedule.

In deciding the application of System Arizona Express Service, Inc. 4 M. C. C. 129,131, the Commission stated:

> Most of the so-called off-route points in Arizona are so far off-route as to lose their status as such. An off-route point usually is one served by line-haul equipment making a short side trip and returning as soon as possible to its regular route and schedule. When asked as to the extent of departure from the regular routes in the performance of off-route service past and proposed, applicant's manager suggested that such service would relate to hauls of 150 miles from regular routes. Obviously, such service is not off-route service as that term ordinarily is used * * * The authority granted herein will include authority to serve off-route points in Arizona west of Phoenix which are between U. S. Highways 60 and 80; or which are not more than 25 miles north of U. S. Highway 60, or not more than 25 miles south of U. S. Highway 80.

Again, in Los Angeles-Seattle M. Express Inc., 24 M. C. C. 141, 145, the Commission said:

> San Diego, California, is situated too far distant from Los Angeles to be termed an off-route point.

Unquestionably, the Commission has rendered thousands

of decisions dealing with off-route points, and from the Commission's decisions, which are set out, it can be readily appreciated, that each and every case handled by the Commission are processed by the Commission, separately and distinctly, as in the cases above cited, and upon which the Appellee contends the Commission has established what constitutes an off-route point. The Appellant argues that it did, only insofar as that particular application before it, and that in making its decision, among other things, the Commission held, and I quote, "Authority to serve the off-route points of Sylacauga and Talladega was granted only in connection with the authorized regular route operation between Birmingham and Atlanta." It can be easily ascertained from the above quotation by the Commission, that there is no principal laid down by the Commission that is applicable to the question here before the Court, also, the Commission, in that particular instance, denied the application, as it did in the last decision cited by the Appellee on page 7.

And on page 8, the commission denied the application to serve an off-route point, and again the Commission was basing it on a single operation as it was in the two previous decisions by the Appellee.

Unquestionably, the Appellee must recognize the fact that each and every decision rendered by the Commission, in issuing a certificate, is done only on the merits of the application and all of the elements surrouding it. In the cases cited by the Appellee, certainly it can not be accepted that the Commission has established any norm or precedent in what constitutes service to an off-route point that would be applicable to the situation here before the Court. The

Interstate Commerce Commission is the exclusive agency authorized to issue authority to transport property in Interstate Commerce for compensation, and the Appellant contends that it is very obvious from the certificates held by the Applicant alone, that each and every certificate is issued only on the basis of what public convenience and necessity require.

On page 9 of Appellee's brief, a reference is made to a Rand McNally map, setting out the distances that Appellant's vehicles would have to travel in serving Pasco as an off-route point. The Appellant, from the same map, could possibly clutter this brief with hundreds of instances where it is authorized to serve points and places in the five counties over MC 7746 Sub 22, that would entail the traveling of substantially more miles over unnumbered or specified highways, and Appellant further contends that items 10 and 6 as set out in Appellants opening brief on pages 14 and 15, no longer requires a carrier, in serving an off-route point, to return over the same route to the point of its original departure. The argument advanced by the Appellee, in that particular instance, is not well founded whatsoever.

The Appellees on the same page, calls the Court's attention to the fact that the Commission has many times held that off-point authority is not severable from routes to which it is commonly appertanent. Unquestionably, the Commission has on numerable instances granted certificates to motor carriers with the restriction that certain points could not be served as off-route points. That argument by the Appellee substantiates the Appellant's conten-

tions here before the Court. in that, under Certificate MC 7746 Sub 22, the Commission did not impose any such restriction whatsoever upon the Appellant in serving all points and places in the five counties as intermediate and off-route points in connection with its otherwised regular route operations.

At the bottom of page 9, Appellees present the argument that it is not the function of the certificate to enumerate the operations that may not be performed, and cited two cases to substantiate their contention. Again, the Appellant contends that it could recite hundreds of instances where the Commission, in issuing certificates, has placed restrictions in the certificate, which forbids the carrier from performing certain operations, and in the instant case, the language by the Commission in granting certificate MC 7746, Sub 22, is clear, concise, understandable language, with no ambiquity whatsoever, authorizes the Appellant to conduct the very operation that it has been doing since the issuance of the certificate.

On page 10, the Appellees again raises the question of Pasco being an off-route point, the Appellant has already replied to that contention in this brief.

In the second paragraph, the Appellees allege the operation of the Appellant to be substantial.

It must be conceded, that the Commission certainly took into consideration the volume of business that could be anticipated before they granted to the Appellant their certificate, as it is an undeniable fact that convenience and necessity must be shown before a certificate can be obtained.

In the same paragraph, the Appellee again interjects into the case before the Court, the question of traffic from Boise to Portland, THAT IS NOT THE QUESTION INVOLVED IN THIS PROCEEDING, nor is the question of competition with another carrier involved in this proceeding.

On the bottom of page 10 and the top of page 11, Appellee suggests, in their language, that the Appellant should file an application to travel over the road in question. That argument advanced by the Appellee can only be considered in the light of their other reasoning.

In the George H. Blewett et al-Purchase-Hester Truck Lines, Inc. No. MC F-1521, the Commission said, among other things, quote "In our opinion. service to and from a given off-route point in connection with a regular route contemplates the use of the most direct available highway between the off-route point and the nearest point on the regular route, which in this case is Jackson, and this view is not at variance with the conclusion reached by Division 5 in the case just cited." Cited by the Commission, was Dixie Freight Lines, Inc. Extension Columbia, Ga. 29 M. C. C. 406 (2 FEDERAL CARRIERS CASES 7799). It is worthy to note, that in the Blewett case, the Vendor held a certificate to serve the off-route point of Vicksburg in connection with its regular route operations between Jackson and New Orleans. From Rand McNally map, Vicksburg is approximately 44 miles from Jackson. This certificate disputes the contention of the Appellee, as to an off-point point being a short distance from the regular route operation of a carrier.

In the instant case, Appellant, in serving the points and places in the five counties, is using the most direct

available route from its Boise-Spokane operation, and to sustain the contention of the Appellee, would, in fact, be revoking part of certificate MC 7746 Sub 22.

It is the further contention of the Appellant, that by the issuance of a certificate to a carrier, there is a contractual relationship created by the Interstate Commerce Commission and the carriers. It would be curbstone law to contend that the language used in that certificate should be interpreted strongly against the party using it (3 Williston on contracts, Section 621, Revised Addition).

It has been aptly said:

> "The United States, when they contract with their citizens, are controlled by the same laws that govern the citizen in that behalf. All obligations which would be implied against citizens under the same circumstances will be implied against them****" Carstens Packing Co. V. United States, 62F. Supp. 525, quoting with approval United States v. Bostwick, 94 U. S. 53, 24 Law Edition 65, 66.

On the last half of page 11, Appellee seems to be under the impression, that Appellant's argument in its opening brief, intimated Appellant did not know the limits of its operating authority. The Appellant can best answer that, in that Appellant has since the time the certificate was granted, interpreted it to authorize Appellant to conduct the very operation that it is now doing, and from which Appellant contends there can be no other interpretation.

Respectfully submitted,

Reilly & Cael
Edward J. Reilly
603-4 Columbia Building